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In re Application of
SEBIRE, et al.
U.S. Application No.: 09/937,949
PCT No.: PCT/EP01/01839
Int. Filing Date: 16 February 2001
Priority Date: 18 February 2000
Atty Docket No.: NOKI14-00009
For: COMMUNICATIONS SYSTEM

DECISION ON PETITIONS

UNDER 37 CFR 1.181 AND

37 CFR 1.8

This decision is in response to applicant's facsimile communication filed 20 November 2003 in the United States Patent and Trademark Office (USPTO). The communication is being treated first as a petition under 37 CFR 1.181 as to the previous filings and as a petition under 37 CFR 1.8 regarding the request to withdraw the holding of abandonment. No petition fees are required.

BACKGROUND

On 16 February 2001, applicant filed international application PCT/EP01/01839, which claimed priority of an earlier application filed 18 February 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 23 September 1999. The deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 18 October 2001.

On 02 October 2001, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an information disclosure statement and a First preliminary amendment.

On 09 November 2001, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide an executed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International Application number and international filing date. Applicant was given two months to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 17 July 2002, applicant was mailed a NOTIFICATION OF ABANDONMENT (Form

PCT/DO/EO/909) informing applicant that applicant had failed to respond to the NOTIFICATION OF MISSING REQUIREMENTS mailed 09 November 2001 within the time period set therein and that above-identified application was abandoned as to the United States.

On 20 November 2003, applicant filed the present petition under 37 CFR 1.8 accompanied by copies of the papers purportedly filed on 05 August 2002 and 11 September 2003.

DISCUSSION

I. Petition Under 37 CFR 1.181

Applicant's present filing requests consideration of a request to withdraw holding of abandonment purportedly filed on 05 August 2002 and again on 11 September 2003. The best evidence of what was actually received by the Office is a postcard receipt containing a specific itemization of all the items being submitted. See MPEP 503. Here, applicant has provided a copy of a date-stamped postcard receipt for both filings. As applicant has provided a stamped postcard receipt for the 05 August 2002 there is no need to consider the 11 September 2003 filing. The postcard identifies the application by applicant, application number and docket number. Among the items listed on the receipt is "Request to Withdraw Holding of Abandonment" and "Copies of Response to Notification of Missing Requirements, Declaration and Power of Attorney, Certificate of Mailing by First Class Mail, and a check in the amount of \$130.00 as submitted on January 9, 2002." The receipt is stamped "DT05 Rec'd PCT/PTO 05 AUG 2002." Thus, it is clear that applicant filed a request to withdraw holding of abandonment accompanied by the appropriate response documents on 05 August 2002. As detailed below, applicant has attested that the copies considered herein are true and complete copies of the originally filed papers.

II. Petition Under 37 CFR 1.8

37 CFR 1.8(b) states:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice the correspondence will be considered timely filed if the party who forwarded the correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or

transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

With the present petition, applicant has satisfied items all three items above. Thus, it is proper to grant applicant's petition under 37 CFR 1.8.

Further, a review of the application file reveals that all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States have now been satisfied. Regarding the assigning of a 35 U.S.C. 371 date, 37 CFR 1.8(a) states that, "[T]he actual date of receipt will be used for all other purposes." In light of the granting of the 37 CFR 1.181 petition, it is proper to accept the copy of the combined declaration and power of attorney filed 20 November 2003 as a substitute for the combined declaration and power of attorney filed 05 August 2002.

CONCLUSION

Applicant's petition under 37 CFR 1.181 is GRANTED.

Applicant's petition under 37 CFR 1.8 is GRANTED.

As authorized, the \$130.00 surcharge will be charged to Deposit Account No.: 50-0208.

The "NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909)" mailed on 17 July 2002 is hereby **VACATED**.

This application will be given an international application filing date of 16 February 2001 and a date of **05 August 2002** under 35 U.S.C. 371.

This application is being returned to the DO/EO/US for processing in accordance with this decision.



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